

# MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 1320, L.D. 1855)  
2 SECOND REGULAR SESSION  
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE  
5

6 Legislative Document

No. 2136

7  
8 H.P. 1514

House of Representatives, March 5, 1986

9 Reported by Representative Brannigan from the Committee on Business  
10 and Commerce and printed under Joint Rule 2. Original bill sponsored by  
11 Representative Stevens of Bangor. Cosponsored by Senator Bustin of  
Kennebec, Representative Rydell of Brunswick, and Representative Telow of  
Lewiston.

EDWIN H. PERT, Clerk

12  
13 STATE OF MAINE  
14

15 IN THE YEAR OF OUR LORD  
16 NINETEEN HUNDRED AND EIGHTY-SIX  
17

18 AN ACT to Perfect the Maine Business  
19 Opportunity Sales Act.  
20

21 Be it enacted by the People of the State of Maine as  
22 follows:

23 Sec. 1. 32 MRSA §4691, sub-§3, as enacted by PL  
24 1979, c. 571, is amended to read:

25 3. Business opportunity. "Business opportunity"  
26 means:

27 A. The sale, lease or distribution of any  
28 products, equipment, supplies, goods, commodi-  
29 ties, including plants used for cultivation and  
30 animals used for breeding, or services which are  
31 sold, leased or distributed by the seller or an  
32 affiliated person, to the purchaser for the pur-  
33 pose of enabling the purchaser to start a busi-  
34 ness, for which the purchaser pays to the seller  
35 a fee which exceeds \$250 and in which the seller  
36 represents:

1 (1) That the seller or an affiliated person  
2 will provide locations or assist the pur-  
3 chaser in finding locations for the use or  
4 operation of vending machines, racks, dis-  
5 play cases or other similar devices or  
6 currency-operated amusement machines or de-  
7 vices, on premises neither owned nor leased  
8 by the purchaser or seller;

9 (2) That the seller or an affiliated person  
10 will purchase any or all products made, pro-  
11 duced, fabricated, grown, bred or modified  
12 by the purchaser using in whole or in part,  
13 the supplies, services or chattels sold to  
14 the purchaser;

15 (3) That the seller guarantees that the  
16 purchaser will derive income from the busi-  
17 ness opportunity which exceeds the price  
18 paid for the business opportunity;

19 (4) That if the purchaser is unsatisfied  
20 with the business opportunity, the seller  
21 will refund all or part of the price paid  
22 for the business opportunity, or repurchase  
23 any of the products, equipment, supplies or  
24 chattels supplied by the seller; or

25 (5) That upon payment by the purchaser of a  
26 fee or sum of money ~~which exceeds~~ \$50 to the  
27 seller or an affiliated person, the seller  
28 or an affiliated person will provide a sales  
29 program or marketing program which will en-  
30 able the purchaser to derive income from the  
31 business opportunity which exceeds the price  
32 paid for the business opportunity, provided  
33 that this subsection shall not apply to the  
34 sale of a marketing program made in conjunc-  
35 tion with the licensing of a registered  
36 trademark or service mark;

37 B. "Business opportunity" does not include the  
38 sale of an ongoing business when the owner of  
39 that business sells and intends to sell only that  
40 one business opportunity; nor does it include the  
41 not-for-profit sale of sales demonstration equip-  
42 ment, materials or samples, for a total price of  
43 ~~\$100~~ \$500 or less.

1           Sec. 2. 32 MRSA §4695, sub-§1, ¶B, as enacted by  
2 PL 1979, c. 571, is amended to read:

3           B. The Department of Business Regulation Super-  
4 intendent of Banking or any person designated by  
5 the superintendent certifies to the surety compa-  
6 ny issuing the bond or the licensed bank or sav-  
7 ings institute holding the escrow account that it  
8 has no knowledge of any outstanding judgment,  
9 claims or notices of claims against the seller in  
10 this State.

11           Sec. 3. 32 MRSA §4696, as enacted by PL 1979, c.  
12 571, is amended to read:

13           §4696. Registration

14           Every seller shall register with the Department  
15 of Business Regulation Superintendent of Banking or  
16 any person designated by the superintendent prior to  
17 selling, offering to sell advertising or undertaking  
18 any other act relating to the promotion of business  
19 opportunities in this State. Registration shall be  
20 complete upon paying a \$25 fee, filing a copy of the  
21 disclosure statement required by section 4692 and  
22 providing evidence of a bond or escrow account satis-  
23 fying the requirements of section 4695. The seller  
24 shall update the disclosure statement as material in-  
25 formation changes.

26           Sec. 4. 32 MRSA §4700, sub-§§4, 5 and 6 are en-  
27 acted to read:

28           4. Administrative orders; rules; forms. The su-  
29 perintendent may make, amend and rescind rules, forms  
30 and orders as are necessary to carry out the provi-  
31 sions of this section, including rules and forms gov-  
32 erning disclosure documents, applications and reports  
33 and defining any terms, whether or not used in this  
34 section insofar as the definitions are not inconsis-  
35 tent with this section. For the purpose of rules and  
36 forms, the superintendent may classify business op-  
37 portunities, persons and matters within his jurisdic-  
38 tion and prescribe different requirements for differ-  
39 ent classes.

1           5. Cease and desist orders. Whenever it appears  
2 to the superintendent that any person has engaged in  
3 or is about to engage in any act or practice consti-  
4 tuting a violation of this section or any rule or or-  
5 der under this section, the superintendent may issue  
6 an order directing the person to cease and desist  
7 from continuing the act or practice. Any person named  
8 in a cease and desist order issued by the superin-  
9 tendent may, within 30 days after receipt of the or-  
10 der, file a written request for a hearing with the  
11 superintendent. If the superintendent does not re-  
12 ceive a written request for a hearing within the time  
13 specified, the cease and desist order will become  
14 permanent and the person named in the order will be  
15 deemed to have waived all rights to a hearing.

16           6. Rescission; surety bond. Any person who vio-  
17 lates this section or any rule or order under this  
18 section, is liable to the purchaser who may sue ei-  
19 ther at law or in equity for rescission, for recovery  
20 of all money or other valuable consideration paid for  
21 the business opportunity and for actual damages, to-  
22 gether with interest at the legal rate from the date  
23 of sale, reasonable attorney's fees and court costs.

24 The purchaser may sue the surety of the bond, either  
25 at law or in equity to recover all money or other  
26 valuable consideration paid for the business opportu-  
27 nity and actual damages, together with interest at  
28 the legal rate from the date of sale, reasonable at-  
29 torney's fees and court costs for any violation of  
30 this section, of any rule or order under this section  
31 committed by a seller or for any breaches of any  
32 business opportunity contract or for any fraudulent  
33 practices or unlawful representation, whether or not  
34 by way of advertising, perpetrated by a seller in  
35 connection with the offer or sale of any business op-  
36 portunity. The liability of the surety shall not ex-  
37 ceed the amount of the bond.

38           Sec. 5. 32 MRSA §4700-A, as enacted by PL 1979,  
39 c. 571, is amended to read:

40           §4700-A. Service of process

41           The Department of Business Regulation Superin-  
42 tendent of Banking or any person designated by the

1     superintendent shall be an agent of each seller who  
2     sells, offers for sale, advertises or promotes busi-  
3     ness opportunities in this State for service of any  
4     process, notice or demand required or permitted by  
5     law to be served and this service shall be binding  
6     upon the seller. Service of any such process, notice  
7     or demand shall be made as provided for service upon  
8     the Secretary of State under the Maine Rules of Civil  
9     Procedure, Rule 4(d)(8).

10

STATEMENT OF FACT

11           The bill, legislative document 1855, is essen-  
12     tially the Model Business Opportunities Sales Act.  
13     The Bureau of Banking, Securities Division, felt that  
14     extensive regulation found in the Model Business Op-  
15     portunities Sales Act was not necessary. This new  
16     draft of the bill adds to current law instead of re-  
17     placing it. Certain provisions from the original bill  
18     for better enforcement and regulation have been  
19     added. In addition, this new draft changes the regu-  
20     lation of business opportunities from the Department  
21     of Business, Occupational and Professional Regulation  
22     to the Superintendent of Banking, as did the original  
23     bill.

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